IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.61/2003

1. Silvestre D'Souza,
2. Carmelina Perpetuo Socorro
Vaz D'Souza,
3. Joseph D'Souza,
4. Rosy D'Souza,
Appellants 3 and 4 through their
constituted attorney
Carmelina D'Souza,
all residing at Manxe Bhat,
Talaulim, Ilhas, Goa. ..... Appellants.

V/s.

1. Ventura D'Souza,
2. Felicidade D'Souza,
Respondents No.1 and 2
residing at Xirer, Near
Azmani School, P.O.
Neura Ilhas, Goa.
3. Emilio Francisco D'Souza,
4. Paulina D'Souza,
Respondents No.3 and 4
C/o. Arxeth Afonso, Near
St. Mathew's Church P.O. Neura
Azossim, Ilhas, Goa.
5. Perpetua Socorro Albuquerque
6. Marcelino Albuquerque
Respondents No.5 and 6.
Building No.3, Merces
Apartments, Merces
Firguem Bhat, Merces,
Ilhas, Goa. ... Respondents.

Mr. M.B. D'Costa, Sr. Advocate with Mr. J.A. Lobo, Advocate for the appellants.

Mr. R.G. Ramani, Advocate for the respondnts No.1, 2, 5 & 6.

CORAM : N.N. MHATRE, J.

DATE : JANUARY 15, 2004.

ORAL JUDGMENT :

The order impugned is in respect of Inventory Proceedings No.47/2001/A whereby the objection raised by the appellants as interested parties for removal of the administrator is rejected. It appears that the learned trial Judge has not considered the provisions of Articles 2068 and 2070 to ascertain as to who was in possession on the date of opening of the inheritance. This exercise would have to be conducted by the learned trial Judge while deciding the application made by the appellants. Possession is a factor which would have to be considered prior to appointment of the administrator. In view of this, the matter is remanded to the trial Court to decide the issue afresh. The learned trial Judge is to consider the provisions of Articles 2068 and 2070 to ascertain as to who was in possession at the time of opening of the inheritance. The impugned order is set aside. Appeal from Order is disposed of accordingly.

NISHITA MHATRE, J.

ssm.